

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
	§	
v.	§	Cr. No. C-82-162
	§	
PAOLO M. TREVINO, JR.	§	
Defendant.	§	

**MEMORANDUM OPINION AND ORDER  
GRANTING MOTION TO AMEND JUDGMENT**

Pending before the Court is Defendant's motion to amend judgment, received February 9, 2007. (Electronic D.E. 1.)<sup>1</sup> Pursuant to the Court's Order (Electronic D.E. 2), the government has filed a response (Electronic D.E. 7), in which it agrees that Defendant's judgment should be amended and that his motion to amend judgment should be granted. Additionally, Defendant has filed a supplement to his original motion (Electronic D.E. 6), which the Court has also considered.

As is evident from the record in this case, Defendant was convicted of two different counts after a jury trial and sentenced to 10 years' imprisonment on Count 1 and 5 years' imprisonment on Count 2. (D.E. 33, 36.) The sentences were to run consecutive to each other and consecutive to the state sentence Trevino was already serving. (D.E. 33, 36.)

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<sup>1</sup> Due to the age of this case, most documents are available only as paper copies and are contained in the physical file maintained by the Clerk. Newer docket entries related to Defendant's motion to amend judgment are docketed electronically, and are referred to herein as (Electronic D.E. \_\_.) Older docket entries from the physical file are referred to as (D.E. \_\_).

Trevino appealed his conviction on Count 1 of the indictment. (D.E. 39.) In a published decision, the United States reversed his conviction on Count 1, finding a lack of sufficient evidence to sustain the conviction. United States v. Trevino, 720 F.2d 395 (5th Cir. 1983). In the conclusion of its decision, the appellate court ordered that Count 1 of the indictment be dismissed and reversed the judgment of the district court as to Count 1. Trevino, 720 F.3d at 401. The appellate court's opinion was docketed by the Clerk of this Court. (D.E. 53.) The next docket entry indicates that attorneys for the government were notified "re dismissal of count 1." (January 19, 1984 Docket Entry.) However, nothing in the record indicates that Count 1 of the indictment was ever dismissed. Additionally, no amended judgement was ever issued.

Trevino has since completed service of his state sentence and is in the custody of the Bureau of Prisons to serve his federal sentence. The BOP, however, appears to be relying on the original judgment in this case. Documentation submitted by Defendant indicates that the BOP calculates that he should serve a 15-year federal sentence and has calculated his projected release date as January 15, 2017. (See Electronic D.E. 6, at attachment titled "Sentence Monitoring Computation Data.")

It is clear that the original judgment should be modified based on the Fifth Circuit's resolution of Defendant's appeal and that, pursuant to the Fifth Circuit's instructions, Count 1 of the indictment should be dismissed. The Court GRANTS Defendant's motion to amend judgment (Electronic D.E. 1) and dismisses Count 1 and its sentence of 10 years.

Remaining to be served is Defendant's five-year sentence as to Count 2. All other portions of the original judgment remain in full force and effect.

Ordered this 9th day of September, 2007.

  
HAYDEN HEAD  
CHIEF JUDGE